

REMARKS

The present Amendment is in response to the Official Action mailed June 25, 2007. Claims 1-6 have been amended, Claims 7-22 have been cancelled, and claims 23-32 are new. The following sets forth Applicants' remarks pertaining to the above amended claims and the outstanding Action.

In the Official Action, the Examiner first noted Applicants election of Group I, corresponding to claims 1-6 in the reply previously submitted in the matter. Applicants hereby acknowledge that election and note that they have cancelled claims 7-22 accordingly.

Further in the Action, the Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,258,031 to Salib et al. ("Salib") and claims 2-6 under 35 U.S.C. § 103(a) as being obvious in view of Salib. Essentially, the Examiner asserted that Salib discloses a device including a first member and a first intermediate member. The first member includes a first vertebral contact surface and a first flange including at least one through hole capable of receiving a bone screw in at least one fastener hole. The first intermediate member includes a first intermediate vertebral contact surface capable of being coupled to an end plate of an intermediate vertebral bone adjacent to the first vertebral bone and a first intermediate flange including at least one fastener hole. The Examiner also noted that the fastener holes are capable of receiving at least one fastener capable of connecting a first insertion plate to the first member and a first end to the first intermediate member. The Examiner specifically pointed out that the recitation of a first insertion plate in independent claim 1 was, in his opinion, not positively recited, and indicated that all structural and functional limitations directed to an insertion plate were not required to be shown in the prior art

reference accordingly. The Examiner admitted that Salib in fact does not teach same.

In the present Amendment, Applicants have amended independent claims 1-6 to refer to an intervertebral disc replacement assembly as opposed to merely an intervertebral disc replacement device. Among other amendments, Applicants have amended independent claim 1, as well as its dependent claims, to positively refer to a first insertion plate for coupling a first member and a first intermediate member together. This first insertion plate must cooperate with a first member having a first fastener hole and a first intermediate member having a second fastener hole offset from the first fastener hole of the first member. This limitation is clearly shown in FIGS. 14A-18B of the present application, and as such does not constitute new matter. In addition, it is clear from the specification that the focus for such a design is to allow a multiple level intervertebral disc replacement device to be inserted into two adjacent intervertebral disc spaces of the spine. Further claims, which are dependent upon independent claim 1, recite the inclusion of, for example, a second intermediate member and a second member for insertion into an adjacent disc space to that which the first member and the first intermediate member are inserted. Furthermore, certain of the remaining claims recite specific structure for the various members of the disc replacement device, as well as for the first and second insertion plates which are utilized in connection with same. All of this is far different from the cited prior art.

By the Examiner's own admission, the Salib reference simply does not teach first or second insertion plates for keeping two portions of a two part implant together during insertion of same. In addition, it is unclear from the disclosure of Salib, as to whether such reference contemplates providing multiple implants for adjacent vertebral spaces. The

Examiner simply indicated that it would have been obvious to one of ordinary skill in the art to modify that which is taught in the Salib reference so as to provide a two level implant in accordance with the present invention. However, Applicants point out that the specific offset design of the flanges, through holes and fastener holes of the various members of the present invention implant allow for this dual level implant to be inserted. Applicants discovered that designing the implant accordingly would prevent any unwanted contact among the various members when they are fastened to the different, but adjacent vertebral bodies. There is simply no teaching or suggestion of such in Salib, and therefore, Applicants respectfully submit that the present claims are allowable over same.

In light of all of the above, Applicants respectfully request allowance of each and every one of the currently pending claims 1-6 and 23-32.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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